

SUPERIOR COURT OF CALIFORNIA COUNTY OF MERCED

Alternative Dispute Resolution (ADR) Information Guide

Adapted by permission from the
Administrative Office of the Courts' publication:
“Alternative Dispute Resolution, *Options for Resolving Your Dispute*”

ADR INFORMATION GUIDE

There are Alternatives to Going to Trial

Did you know that most of all civil cases filed in court are resolved without going to trial? Many people use processes other than trial to resolve their disputes. These alternative processes, known as Alternative Dispute Resolution or ADR, are typically less formal and adversarial than trial, and many use a problem-solving approach to help the parties reach agreement. Because of these potential advantages, it is worth considering using ADR early in a lawsuit, **or even before you file a lawsuit.**

Potential Advantages of ADR

Here are some potential advantages of using ADR:

- ❖ **Saves Time and Money:** A dispute often can be settled or resolved much sooner with ADR, allowing parties to save money on attorney fees, court costs, and experts' fees. An ADR fee of \$300 to be shared by the Parties is charged by the Court for its Judicial Arbitration and Early Mediation Programs – this fee is not waived in cases involving successful Fee Waiver Applications.

- ❖ **Increases Control Over the Process and the Outcome:** In ADR, parties typically play a greater role in shaping both the process and its outcome. In ADR, parties have the opportunity to tell their side of the story just as they do at trial. Some ADR processes, such as mediation, allow the parties to fashion creative resolutions that may not be available in a trial. Other ADR processes, such as arbitration, allow the parties to choose a qualified person or expert in a particular field to decide the dispute.

- ❖ **Preserves Ongoing Relationships:** ADR can be a less adversarial way to resolve a dispute. For example, an experienced mediator can help the parties effectively communicate their needs and point of view to the other side. This can be an important advantage where the parties have a relationship to preserve. For example, in cases involving business partners, family members or customer-vendor relationships.

- ❖ **Increases Satisfaction:** In a trial, there is typically a winner and a loser. ADR can help the parties find win-win solutions and achieve their respective goals. This, along with other potential advantages of ADR, may increase the parties' overall satisfaction with both the dispute resolution process and the outcome.

- ❖ **Fosters Attorney-Client Relationships:** Parties and Attorneys may also benefit from ADR by exploring their roles as problem-solvers and counselors rather than merely acting as adversaries. Quick, cost-effective, and satisfying resolutions are likely to produce happier parties and stronger relationships with their attorneys.

What are the ADR Options?

The most commonly used ADR processes are Mediation, Arbitration, Neutral Case Evaluation, and Settlement Conferences.

♦ Private Mediation

In mediation, an impartial person called a “mediator” helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but remains helps the parties communicate so they can settle the dispute themselves. Mediation leaves control of the outcome with the parties.

Cases for Which Mediation May Be Appropriate: Mediation may be particularly useful when parties have a relationship they want to preserve. So when family members, neighbors, or business partners have a dispute, mediation may be the ADR process to use. Mediation is also effective when emotions are getting in the way of resolution. An effective mediator can listen to the parties and help them communicate in an effective and non-confrontational manner.

♦ Private Arbitration

In arbitration, a neutral person called an “arbitrator” hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is typically less formal than a trial, and the rules of evidence may be relaxed.

Arbitration may be either “binding” or “non-binding.” Binding arbitration means that the parties waive their right to a trial and agree to accept the arbitrator’s decision as final. Non-binding arbitration means that the parties are free to request a trial if they reject the arbitrator’s decision. Arbitrations may be structured to set maximum and minimum awards, known as “High-Low Arbitrations”. This allows the plaintiff to have a guaranteed minimum recovery and the defendant to rely on a guaranteed absolute maximum exposure, regardless of how the arbitration unfolds.

Cases for Which Arbitration May Be Appropriate: Arbitration is best for cases where the parties want another person to decide the outcome of their dispute for them but would like to avoid the formality, time, and expense of a trial. It may also be appropriate for complex matters where the parties want a decision-maker who has training or experience in the subject matter of the dispute.

♦ Neutral Case Evaluation

In Neutral Case Evaluation, each party gets a chance to present the case to a neutral person called an “evaluator.” The evaluator then gives an opinion on the strengths and weaknesses of each party’s evidence and arguments and about how the dispute could be resolved. Although the evaluator’s opinion is not binding, the

parties typically use it as a basis for trying to negotiate a resolution of the dispute. Even if not successful in resolving the case, Neutral Case Evaluation can lead to use of other ADR procedures, such as arbitration or mediation, especially when undertaken early in the litigation.

Cases for Which Neutral Case Evaluation May Be Appropriate:

Neutral Case Evaluation is appropriate for most cases, and may be most useful in cases that involve technical issues that require special expertise to resolve or in cases that the only significant issue is the amount of damages.

♦ **Settlement Conferences**

In Settlement Conferences, the parties and their attorneys meet with the judge or a neutral person called a “settlement officer” to discuss possible settlement of their dispute. The judge or settlement officer does not make a decision in the case but assists the parties in evaluating the strengths and weaknesses of the case and in negotiating a settlement. Settlement Conferences are appropriate in any case where settlement is an option. Mandatory Settlement Conferences, ordered by the Court, are often held near the date a case is set for trial.

ADR Programs Offered by Merced Superior Court

Merced Superior Court provides two forms of ADR programs through its Early Mediation Program (EMP) and its Judicial Arbitration Program, described below.

♦ **Merced Superior Court’s *Early Mediation Program (EMP)***

Civil unlimited cases are generally assigned to the Early Mediation Program.

Merced Superior Court provides parties with an opportunity to mediate cases before extensive fees and costs are spent (see “Private Mediation” below, for a description of how Mediation works). The EMP allows parties the opportunity to obtain the services of a mediator for only a \$300 fee, to be shared by the parties. Because the parties have not generally committed extensive resources and time to a case at this early stage, resolution can be achieved at a lower cost and possibly with more satisfying results. Early Mediation Program Forms are available at: www.merced.courts.ca.gov. Here’s how the EMP works:

- Civil Unlimited Cases are generally assigned to the Early Mediation Program, unless an opt-out form is filed by any party within 120 days from the filing of the Complaint. **Timely service of the Complaint (within 60 days of filing) is essential to comply with the Early Mediation Program requirements.**
- The \$300 EMP fee must be paid to the Civil Clerk’s Office within 120 days of filing the lawsuit, and the Parties are to schedule Early Mediation before the first CMC (set approximately 150 days from the filing of the Complaint).

Plaintiff is to collect the EMP fee, to be shared equally by the Parties or as the Parties agree, and timely submit the entire amount to the Civil Clerk's Office.

- Parties then select a Mediator from Merced Superior Court's ADR Neutral List available on the Court's website. Parties must notify the ADR Office immediately if a mediator cannot be agreed upon. The ADR Office will then provide the parties with a mediator short list where each party may de-select a mediator and report back to the ADR Coordinator within 5 days.
- In preparation for the Early Mediation, Parties are to draft a Mediation Statement of no more than 5 pages outlining the Party's position including agreed to and disputed facts. The Mediation Statement is to be sent to the mediator one (1) week before the Early Mediation (do not file with the Court).
- After the Early Mediation, Parties are to fill out a confidential Mediation Survey and send it to the ADR Office of the Court.

♦ **Merced Superior Court's Judicial Arbitration Program**

Merced Superior Court provides parties with an opportunity to arbitrate their cases for a \$300 fee before extensive fees and costs are spent. This program is generally ordered in cases where the amount in controversy is equal or less than \$50,000. The Parties may agree to waive this cap and allow the possibility of a larger award. The Parties may also agree to make the Arbitration Award binding, thereby eliminating the need of further litigation. Otherwise, after Judicial Arbitration, the Parties receive an Award that they may accept or reject.

Serving the ADR Information Packet

The ADR Information Packet, which is provided to all Plaintiffs initiating a lawsuit, consists of:

- ▶ The ADR Information Guide
- ▶ The ADR Stipulation Form

The Plaintiff must serve a copy of the ADR Packet on each Defendant with the Complaint. Cross-Complainants must serve a copy of the ADR Packet on all new Cross-Defendants with the Cross-Complaint. The ADR Information Packet is available in the Civil Clerk's Office or online at www.merced.courts.ca.org.

Who You Can Call

For additional information, please contact the following:

- ▶ State Bar of California (415) 538-2000
- ▶ Calif. Dept. of Consumer Affairs, Consumer Info. Center, (800) 952-5210
- ▶ Merced Superior Court, ADR Office, (209) 725-4131
- ▶ Merced County Bar Association, (209) 722-8129
- ▶ Self Help Information on line: <http://www.courtinfo.ca.gov/selfhelp>